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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

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13 EMPLOYEE PAINTERS' TRUST, through
14 their designated fiduciary John Smirk;
15 INTERNATIONAL UNION OF PAINTERS
16 & ALLIED TRADES INDUSTRY PENSION
17 FUND; IUPAT FINISHING TRADES
18 INSTITUTE; PAINTERS & ALLIED
19 TRADES LABOR-MANAGEMENT
20 COOPERATION INITIATIVE; IUPAT
21 POLITICAL ACTION TOGETHER FUND,
22 through their designated fiduciary, Gary
23 Meyers; DISTRICT COUNCIL 16 JOINT
24 APPRENTICE & TRAINING TRUST
25 FUND; HOLIDAY & VACATION FUND;
26 DISTRICT COUNCIL 16 STAR
27 PROGRAM; LOCAL 567 ORGANIZING
28 FUND; LOCAL 567 UNITY FUND, through
their designated fiduciary, Todd Koch,

Plaintiffs,

vs.

OLYMPUS AND ASSOCIATES, INC. dba
OLYMPUS PAINTING &
SANDBLASTING, a Nevada corporation;
LAZARUS G. TSIOPPOS, an individual

Defendants.

CASE NO.: 2:16-cv-00006-JAD-PAL

**STIPULATION AND ORDER FOR
INJUNCTIVE RELIEF**

The Plaintiffs identified above (hereinafter "Plaintiffs" or "Trusts"), acting by and through their attorneys, Christensen James & Martin, and Defendants OLYMPUS AND ASSOCIATES, INC. dba OLYMPUS PAINTING & SANDBLASTING (hereinafter "Olympus"), a Nevada corporation and LAZARUS G. TSIOPPOS (hereinafter "Mr. Tsiopos"),

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1 an individual (collectively "Defendants"), hereby Stipulate and Agree ("Stipulation") as
2 follows:

3 1. This Stipulation and Order for Injunctive Relief ("Stipulation") is entered into by
4 and between the above-named parties as one crucial component of settlement to resolve certain
5 legal disputes relating to the payment of fringe benefit contributions, interest, liquidated
6 damages and attorney's fees owed to the Plaintiffs by the Defendants and to ensure that the
7 Defendants comply with its obligations to timely report and pay the Plaintiffs all delinquent and
8 future fringe benefit contributions owed for covered work pursuant to the terms of a certain
9 written labor agreements ("Labor Agreements") between Olympus and the International Union
10 of Painters and Allied Trades, District Councils 15 and 16 ("Unions") and various trust
11 agreements creating the Trusts.

12 2. The Plaintiffs are express trusts created pursuant to written declarations of trust
13 between the Unions and employers who have executed collective bargaining agreements with
14 the Unions, consistent with Section 302(c) of the Labor Management Relations Act of 1947, as
15 amended [29 U.S.C. § 186(c)]. The Trusts are intended beneficiaries of the Labor Agreements.

16 3. This Court has jurisdiction over this action pursuant to Section 301(a) of the
17 Labor Management Relations Act of 1947, as amended, [29 U.S.C. § 185(a)] and Sections
18 502(a)(3) and 502(e) of the Employee Retirement Income Security Act of 1974, as amended
19 "ERISA" [29 U.S.C. §§ 1132(a)(3) & 1132(e)].

20 4. The terms of this Stipulation shall be applicable to and binding upon the Plaintiffs
21 and Defendants and their officers, agents, employees, assigns and successors.

22 5. The Parties agree the Plaintiffs are entitled to an injunction requiring the
23 Defendants to pay all delinquent and future fringe benefit contributions owed to the Plaintiffs.
24 The remedial provisions of 29 U.S.C. § 1132(g)(2) allow the Plaintiffs to obtain "such other . . .
25 equitable relief as the court deems appropriate" in addition to the recovery of unpaid fringe
26 benefit contributions, liquidated damages, interest, attorney's fees and court costs. In addition,
27 29 U.S.C. § 1132(a)(3) provides that a court may grant "appropriate equitable relief" as part of
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1 relief sought in civil actions “to enjoin any act or practice which violates any provisions of this
2 title or the terms of the plan.” Equitable relief available under the statute includes injunctive
3 relief. *See, e.g., Sheet Metal Workers’ International Association et. al. v. West Coast Sheet*
4 *Metal Co.*, 954 F.2d 1506 (9th Cir. 1992) (affirming injunction in part); *see also Gould v.*
5 *Lambert Excavating, Inc.*, 870 F. 2d 1214 (7th Cir. 1989) (granting injunction requiring
6 employer to make delinquent and future contributions); *Northern California Glaziers v. Wolter*,
7 2009 WL 1458272, *3 (N.D. Cal. 2009) (“Under 29 U.S.C. § 1132(g)(2)(E), this Court is
8 authorized to award whatever equitable relief it deems appropriate. The Court GRANTS
9 Plaintiff’s request for injunctive relief.”) The Parties agree that an injunction requiring the
10 payment of past due, presently owed and/or future contributions is the type of relief
11 contemplated by Congress to “enjoin an act or practice which violates . . . the terms of the
12 plan.”

13 6. Executed contemporaneously with this Stipulation, a Stipulation for Entry of
14 Amended Judgment by Confession (“Stipulation for Entry”) and Amended Judgment by
15 Confession (“Amended Judgment”) were executed in favor of the Plaintiffs and against
16 Defendants in the total sum of One Hundred Sixty Seven Thousand One Hundred Sixty-Two
17 and 96/100 Dollars (\$167,162.96) (“Judgment Amount”), which sum includes all known fringe
18 benefit contributions owed to the Trusts for work performed during the period of April 1, 2011
19 through February 29, 2016 (“Delinquency Period”), plus pre-judgment interest, liquidated
20 damages, audit fees, attorney’s fees and costs.

21 7. As an express condition for entering into a resolution with the Defendant by way
22 of the Amended Judgment to resolve known claims for past due fringe benefit contributions
23 and rather than incur the expense of litigating the same, Defendants agreed to remain current on
24 their monthly contractual and legal obligations to the Plaintiffs by timely reporting and paying
25 all fringe benefit contributions for covered work, if any, as they become due during the course
26 of the payout under the Amended Judgment, executed contemporaneously herewith, which
27 payout is scheduled to be completed by December 5, 2016. Accordingly, Defendants hereby
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1 stipulate to cooperate with the Plaintiffs in timely reporting and paying all contributions that
2 become due, if any, while any portion of the Judgment Amount remains unpaid. Defendant
3 shall timely remit monthly reports to the Trusts listing the hours worked by employees
4 performing bargaining unit work, if any, and shall timely submit checks to the Plaintiffs to pay
5 for such hours. The reports and payments shall be delivered to the Plaintiffs or their designee
6 on or before the last day of the month following the month in which the hours of covered labor
7 were performed for which the contributions are due (i.e., the contributions for work performed
8 in March 2016 are due no later than April 30, 2016, etc.). Defendants acknowledges that this
9 Stipulation reaffirms the reporting and payment obligations imposed on them by the Labor
10 Agreements, Trust Agreements, and ERISA and agree that this Injunction may be issued
11 immediately in conjunction with entry of the Amended Judgment.

12 8. The Defendants' failure to pay required fringe benefit contributions to the
13 Plaintiffs are breaches of its contractual obligations, are violations of Federal Law and disrupt
14 the status quo as it jeopardizes the availability of monies available to pay for employee benefits
15 for all participating employees under the Plaintiffs' employee benefit plans. Unless the
16 Defendants pay their monthly obligations as required, an increase in the contribution rates
17 required of other employers may become necessary. Thus, the harm caused by the Defendants
18 could extend to others beyond the parties to this action. This Injunction will aid in ending, or at
19 least in limiting such harm.

20 9. The Ninth Circuit Court of Appeals has held that the potential loss of benefits
21 alone satisfies the prerequisite that irreparable harm be shown for the Court to grant injunctive
22 relief. *See Beltran v. Myers*, 677 F. 2d 1317, 1322 (9th Cir. 1982). The Defendants' past and
23 continued failure to timely remit fringe benefit contributions required under the Labor
24 Agreements, Trust Agreements, and ERISA creates the potential loss of employee benefits.
25 Defendants must therefore be ordered to pay and meet their obligations in order to end this
26 threat of harm.

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1 10. The Parties agree that Plaintiffs are likely to prevail in establishing that
2 Defendants are in violation of ERISA for failure to make fringe benefit contributions to the
3 Plaintiffs. The claims asserted by the Plaintiffs are based upon Defendants' self-reporting to the
4 Plaintiffs, which reporting the Defendant cannot now reasonably dispute, and an independent
5 accountant's review of the Defendants' payroll records to test the accuracy of Defendants'
6 reporting. The Labor Agreements remain in effect, and the Defendants acknowledge they must
7 comply with the terms of the Labor Agreements, Trust Agreements, and Federal Law.

8 11. This Stipulation shall become effective upon the approval and order by this Court
9 pursuant to Rule 65 of the Federal Rules of Civil Procedure.

10 12. The Defendants shall be deemed in compliance with the terms of this Injunction
11 as long as it complies with the terms set forth herein and the terms of the Amended Judgment,
12 executed contemporaneously herewith.

13 13. Should Defendants fail to timely and completely comply with the terms,
14 conditions and requirements set forth herein and/or the Amended Judgment, executed
15 contemporaneously herewith, the Defendants specifically authorize the Plaintiffs to seek
16 enforcement of this Injunction, for the Court to hold Defendants in contempt, order Defendants
17 to show cause why they failed to abide by the terms of this Injunction, and/or subjecting
18 Defendants to sanctions.

19 14. The Injunction shall terminate upon the Defendants' full and complete
20 performance of the terms of the Amended Judgment, executed contemporaneously herewith.

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Dated: March 25, 2016.

UNITED STATES DISTRICT COURT JUDGE

Date: March 7 2016